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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 1010

HAROLD L. ICKES, SECRETARY OF THE INTERIOR, AND DAN H. WHEELER, DIRECTOR OF THE BITUMINOUS COAL DIVISION OF THE DEPARTMENT OF THE INTERIOR, PETITIONERS

v.

ASSOCIATED INDUSTRIES OF NEW YORK STATE, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of Harold L. Ickes, Secretary of the Interior, and Dan H. Wheeler, Director of the Bituminous Coal Division of the Department of the Interior, prays that a writ of certiorari be issued to review an order of the United States Circuit Court of Appeals for the Second Circuit entered in the above-entitled cause on March 3, 1943, denying a motion to dismiss for lack of jurisdiction a petition for review of orders of the Secretary of the Interior and the Director of the Bituminous Coal Division estab-

lishing certain revised minimum prices for the sale of bituminous coal.

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 36–59) has not yet been reported.

JURISDICTION

The order of the Circuit Court of Appeals was entered on March 3, 1943 (R. 60). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 12, 1925.

QUESTION PRESENTED

An order of the Director of the Bituminous Coal Division, affirmed by the Secretary of the Interior, revised certain minimum prices applicable to the sale of bituminous coal. Respondent, a membership corporation of New York, some of whose members purchase bituminous coal, filed a petition in the court below for review of the orders, and petitioners moved to dismiss. The question is whether the respondent has legal capacity and standing to maintain a suit under Section 6 (b) of the Bituminous Coal Act of 1937.

STATUTE INVOLVED

Section 6 (b) of the Bituminous Coal Act of 1937 (Act of April 26, 1937, c. 127, 50 Stat. 72–90, 15 U. S. C., Sec. 828, *et seq.*, as extended by

amendment April 11, 1941, 55 Stat. 134, 15 U. S. C., Supp. I, Sec. 849, and amendment of April 24, 1943, P. L. 40, 78th Cong., 1st sess., c. 68, H. J. Res. 113) provides:

> Any person aggrieved by an order issued by the Commission in a proceeding to which such person is a party may obtain a review of such order in the Circuit Court of Appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission[1] be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission and thereupon the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court

[1] The administration of the Act was transferred from the National Bituminous Coal Commission to the Department of the Interior by Act of June 7, 1939, Reorganization Plan No. II, Section 4 (a) and (b), Pub. Res. No. 20, 53 Stat. 813, 1431, 5 U. S. C., Sec. 133 (pursuant to authority granted in the Reorganization Act of 1939 (Pub. No. 19, 76th Cong., 1st Sess., approved April 3, 1939, 53 Stat. 561, 5 U. S. C., Sec. 133, *et seq.*)). Pursuant to order of the Secretary of the Interior, the Bituminous Coal Division is, with exceptions not here pertinent, the successor to all of the functions of the National Bituminous Coal Commission (Order No. 1399 of the Secretary of the Interior, dated July 5, 1939).

> shall have exclusive jurisdiction to affirm, modify, and enforce or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged below. * * *

Other pertinent provisions of the Act are set forth in the Appendix, *infra*, pp. 19–22.

STATEMENT

On May 15, 1938, the National Bituminous Coal Commission instituted a proceeding, designated General Docket No. 15, to carry out the provisions of the Act calling for the establishment of minimum prices for the sale or other disposal of bituminous coal throughout the country. After extensive proceedings before the Commission, the successor Bituminous Coal Division and the Secretary of the Interior, minimum prices finally became effective October 1, 1940 (R. 7–8, 36–37).

On May 2, 1941, a proceeding designated General Docket No. 21 was begun by the Division to determine the nature and extent of changes in the cost of production of coal since such costs had been calculated in General Docket No. 15, and to adjust applicable minimum prices in the light of changes found to have occurred (R. 9–10, 37). As the culmination of that proceeding, by Order dated August 28, 1942, the Director of the Division established revised minimum prices including prices for coal produced in Minimum Price Area 1 for ship-

ment into Market Areas 2 and 4.[2] After review of certain questions of law and policy, the Secretary of the Interior, by order dated September 30, 1942, affirmed the Director's action to the extent reviewed. Pursuant to these two orders, revised minimum prices went into effect October 1, 1942. (R. 37–38.)

On October 27, 1942, respondent Associated Industries of New York, Inc., filed a petition in the court below, under Section 6 (b) of the Act, for review of these orders. The petition alleged that respondent is "a membership corporation organized and existing under the laws of the State of New York"; that its membership consists of 1,356 persons, firms and corporations engaged in commerce or industry in the State of New York; and that its members "purchase and consume substantial quantities (estimated to be approximately 15,000,000 tons for the year 1942) of bituminous coal" produced in Minimum Price Area 1 and shipped and sold in Market Areas 2 and 4 (R. 1). The petition further recited that the contested orders were made as the result of a proceeding held before the Division "to which petitioner was a party" and that petitioner "is aggrieved" by the orders (R. 2). The petition did not allege that respondent is a producer, purchaser, or consumer of coal but did recite that the orders are prejudicial "in

[2] A table of minimum price areas is set out in Section 4 II (a) of the Act. Numbered common consuming market areas were established by the Commission pursuant to Section 4 II (b) of the Act.

that they require petitioner and its members to purchase and pay for bituminous coal produced in Minimum Price Area 1 at increased minimum prices and at prices related to such increased minimum prices which have not been determined according to law" (R. 14).

Petitioners moved to dismiss the proceeding on the ground that respondent was not a "person aggrieved" by the orders within the meaning of Section 6 (b) of the Act and lacked standing to maintain a petition for review, and that the court was without jurisdiction (R. 34–35). The motion was denied by the court below March 3, 1941, on the basis of an elaborate opinion filed February 8, 1943.

REASONS FOR GRANTING THE WRIT

1. The decision below raises questions of substantial public importance which should be decided by this Court.[3]

Whether buyers of bituminous coal may institute and participate in administrative and judicial proceedings under the Bituminous Coal Act, inde-

[3] The decision of the court below was made on a motion to dismiss filed as an accommodation to opposing counsel, before certification or printing of a 10,000 page record. Should the position of the Government ultimately be sustained on the merits, consideration by this Court of the important questions here presented might be foreclosed. Cf. *Land O' Lakes Creameries* v. *McNutt*, 132 F. (2d) 653 (C. C. A. 8). In such circumstances, the Court should in its discretion allow the writ of certiorari to review the order before final judgment below. See, *e. g.*, *Federal Power Commission* v. *Pacific Power & Light Co.*, 307 U. S. 156, 158–159.

pendent of the Office of Bituminous Coal Consumers' Counsel, has been a problem of persistent concern ever since the passage of the Act. In 1938, in *Saxton Coal Mining Co.* v. *National Bituminous Coal Commission,* 96 F. (2d) 517, the Court of Appeals for the District of Columbia granted injunctive relief, *pendente lite* and "without prejudice to an ultimate ruling on the subject," to certain nongovernmental consumers against minimum prices established by the Commission without notice, hearing, or findings of fact. In *City of Atlanta* v. *Ickes,* 308 U. S. 517, this Court held that a municipality which was a consumer of bituminous coal lacked standing to maintain a suit to enjoin the establishment of minimum prices and to secure a declaration that the Act was unconstitutional. In 1941, at the legislative hearings on the extension of the Act, it was asserted and apparently assumed that nongovernmental consumers, independent of the Office of Bituminous Coal Consumers' Counsel, were precluded from initiating proceedings before the Division seeking establishment or alteration of minimum prices,[4] as well as from maintaining a petition for judicial review of the Division's price orders.[5]

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[4] Testimony of John Carson, who for some time served as consumers' counsel and who appeared as representative of the Cooperative League of America, Hearings before House Committee on Ways and Means, H. J. Res. 101, 77th Cong., 1st Sess., 129, 152.

[5] Testimony of John J. Connaughton, counsel for the National Association of Hot House Vegetable Growers, Hearings

The present case is in substance a sequel to the *City of Atlanta* case, *supra*. The court below, in holding the principles declared in the *City of Atlanta* case inapplicable to a proceeding for review under Section 6 (b) of the Act, has subjected minimum price-fixing action to judicial review at the instance of tens of thousands of actual or potential private purchasers or consumers of bituminous coal,[6] irrespective of traditional principles of "standing to sue," and independent of the Office of the Bituminous Coal Consumers' Counsel, the agency specifically created by Congress for the articulation of the interests of the consuming public. Cf. *L. Singer & Sons* v. *Union Pacific R. Co.*, 311 U. S. 295, 307.

The court below holds that the phrase "any person aggrieved" in Section 6 (b) indicates a congressional intention to enlarge the class of persons permitted to seek review to include purchasers as to whom the effect of a minimum price-

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before House Committee on Ways and Means, H. J. Res. 101, 77th Cong., 1st Sess., 557, 563. The hearings do not reveal that any member of the House Committee dissented from the witness' interpretation of the Act; his proposal that the Act be amended to permit consumers to sue under Section 6 (b) went unheeded.

[6] General Docket No. 21, in which the orders challenged by respondent were entered, revised in excess of 100,000 individual bituminous coal prices throughout the country. On review of such orders, there may be as many distinct issues as there are litigating consumers, irrespective of whether the issues are raised in separate or consolidated dockets.

fixing order is *damnum absque injuria.* The same or similar language is found in many other federal statutes.[7] The decision below would seem, then, to compel a similar revision of principles limiting the persons who had "standing to review" the administrative action under those other statutes.

We believe that whether the decision below is right or wrong, the issues which it raises require resolution by this Court. We shall, however, suggest some of the respects in which we believe the court below to have erred.

2. The decision below misconceives and misapplies the standards for determining the right

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[7] In addition to the provisions of the Communications Act discussed in *Federal Communications Commission* v. *Sanders Brothers Radio Station*, 309 U. S. 470, see National Labor Relations Act, 49 Stat. 455, sec. 10 (f), 29 U. S. C., sec. 160 (f); Securities Act of 1933, 48 Stat. 80, sec. 9 (a), 15 U. S. C., sec. 77i; Trust Indenture Act (1939), 53 Stat. 1175, sec. 322 (a), 15 U. S. C., sec. 77vvv (a); Securities Exchange Act, 48 Stat. 901, sec. 25 (a), 15 U. S. C., sec. 78y (a); Public Utility Holidng Company Act, 49 Stat. 834, sec. 24 (a), 15 U. S. C., sec. 79x (a); Investment Companies Act (1940), 54 Stat. 844, sec. 43 (a), 15 U. S. C., sec. 80a–42 (a); Investment Advisers Act (1940), 54 Stat. 855, sec. 213 (a), 15 U. S. C., sec. 80b–13 (a); Fair Labor Standards Act, 52 Stat. 1065, sec. 10 (a), 29 U. S. C., sec. 210 (a); Food, Drug, and Cosmetic Act of 1938, 52 Stat. 1055, sec. 701 (f), 21 U. S. C., sec. 371 (f) (1); Civil Aeronautics Act of 1938, 52 Stat. 1024, sec. 1006 (a), 49 U. S. C., sec. 646 (a); Railroad Retirement Act of 1937, 50 Stat. 315, sec. 11, 45 U. S. C., sec. 228k; Natural Gas Act, 52 Stat. 831, sec. 19 (b), 15 U. S. C. 717r (b); and Federal Power Act, 49 Stat. 860, sec. 213 (b), 16 U. S. C., sec. 825l (b).

of a "person aggrieved" to maintain petitions for judicial review of administrative action pursuant to the Bituminous Coal Act of 1937.

Under traditional principles of common law and equity, and in the absence of express statutory provisions to the contrary, a purchaser of commodities or services has no right to challenge in the courts administrative action which may tend to increase the price he is required to pay for such commodities or services in the market.[8] Any financial injury which such a purchaser may sustain, like financial injury arising out of competition,[9] is *damnum absque injuria.*

The court below held, however, that Congress repudiated normal principles of "standing to sue" in Section 6 (b) of the Act by authorizing "any person aggrieved by an order issued" by the Bituminous Coal Division "in a proceeding in which such person is a party" to obtain review of

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[8] See *United States Light & Heat Corporation* v. *Niagara Falls Gas & Electric Light Co.*, 47 F. (2d) 567 (C. C. A. 2), certiorari denied, 283 U. S. 864; *City of New York* v. *New York Telephone Company*, 261 U S. 312, 316; *Smith* v. *Illinois Bell Telephone Co.*, 270 U. S. 587, 592; *Alexander Sprunt & Son* v. *United States*, 281 U. S. 249; *Edward Hines Trustees* v. *United States*, 263 U. S. 143; *United States* v. *Merchants & Manufacturers Traffic Ass'n*, 242 U. S. 178. See also *In re Engelhard & Sons Company*, 231 U. S. 646, 651; *Williams* v. *Riley*, 280 U. S. 78.

[9] *Tennessee Power Co.* v. *Tennessee Valley Authority*, 306 U. S. 118, 142; *Alabama Power Co.* v. *Ickes*, 302 U. S. 464, 478–479; *Charles River Bridge* v. *Warren Bridge*, 11 Pet. 420, 548.

the order in an appropriate Circuit Court of Appeals. It rested on the doctrine announced by this Court in *Federal Communications Commission* v. *Sanders Brothers Radio Station*, 309 U. S. 470, 477.

In our view, the right of a private purchaser of bituminous coal to maintain a petition for review of a minimum price-fixing order issued under the Bituminous Coal Act of 1937 is not to be measured by principles announced in the *Sanders* case, even if they should reach so far as to permit anyone threatened with financial loss to vindicate the public interest under the Communications Act. In the *Sanders* case this Court held that a competing radio station financially, though not legally, injured by the grant of a license to a rival station could challenge the order of the Federal Communications Commission by appeal as a "person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing" a license. The Act elsewhere expressly gave the right to appeal to one whose application for a license was denied. The Court concluded that if a competitor injured by the grant of another's application had no legal standing to appeal from the granting of a license, the provision dealing with persons "aggrieved" would be deprived "of any substantial effect." In contrast, the language of Section 6 (b) of the Bituminous Coal Act of 1937, covering all appeals, has substantial

meaning when interpreted as providing judicial review for those persons, and only those, possessing rights which the law customarily recognizes and protects. For example, a producer who is a member of the Bituminous Coal Code and who is prohibited from selling coal at less than the prices fixed by an order of the Division would clearly be a "person aggrieved" by the order. See *Utah Fuel Co.* v. *National Bituminous Coal Commission,* 306 U. S. 56; *Gray* v. *Powell,* 314 U. S. 402. *Cf.* page 16, note 14, *infra.*

Further, unlike the competitor in the *Sanders* case, a private purchaser of coal is not the only representative of the general consuming public "having a sufficient interest to bring to the attention of the appellate court errors of law" allegedly committed by the Division in the court of its proceedings. Cf. 309 U. S. 470, 477. For Congress in the Bituminous Coal Act of 1937, in addition to enjoining the Division with the responsibility of establishing minimum prices with "due regard to the interests of the consuming public,[10] created an independent agency, now known as the Office of

[10] Sections 4 II (a) and 4 II (b). See also Section 4 II (c) which authorizes the Division "in the public interest" to establish "maximum prices for coal in order to protect the consumer of coal against unreasonably high prices therefor * * *." Even when "channeled through" a public agency having such responsibilities in a particular field, the interests of the public have been held to be "amply protected." *L. Singer & Sons* v. *Union Pacific R. Co.*, 311 U. S. 295, 308; *Smith* v. *Illinois Bell Telephone Co.*, 270 U. S. 587, 592.

Bituminous Coal Consumers' Counsel,[11] expressly "to appear in the interest of the consuming public" in any proceeding before the Division and to conduct independent investigations necessary to enable proper representation of the consumer in such proceeding. Sec. 2 (b) (2). Consumers' Counsel, together with "any State or political subdivision of a State" and other enumerated persons, is specifically authorized to institute various types of proceedings before the Division. Sec. 5 (b). If dissatisfied with the administrative action, he may appeal.

In view of the meticulous distinction which the statute recurrently makes between private consumers and consumers which are states or political subdivision of states or whose interests are asserted by Consumers' Counsel, it should not be assumed, as did the court below, that a private consumer, not even authorized to institute a proceeding before the administrative agency, was

[11] Under Reorganization Plan No. II, Section 4 (c), transmitted May 9, 1939, pursuant to the Reorganization Act of 1939, the functions of Consumers' Counsel of the National Bituminous Coal Commission were transferred to the Office of the Solicitor of the Department of the Interior. By amendment to the Bituminous Coal Act, the Office of Bituminous Coal Consumers' Counsel was reconstituted as a separate and independent agency. Act of April 11, 1941, 53 Stat. 134. Section 22 (b) of the amended Act provides that "The counsel shall have and perform the functions conferred and imposed upon the Consumers' Counsel of the National Bituminous Coal Commission [Coal Division] by this Act as in force upon its enactment * * *."

intended by Congress to institute proceedings for review in the federal courts.

3. The court below concluded that because respondent was treated as "an interested party" within the meaning of Section 2 (a) and was allowed to participate, independent of Consumers' Counsel, in the administrative proceeding, it is accordingly a "person aggrieved" within the meaning of Section 6 (b) and entitled, independent of Consumers' Counsel, to maintain a petition for judicial review (R. 56–57).

This conclusion ignores, however, the substantial differences in scope and purpose between administrative and judicial proceedings. Cf. *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 141–144. Like many other administrative agencies charged with the formulation of policies and regulations of general applicability, the Division encourages persons in any way concerned with a proceeding to appear at its hearings and offer relevant evidence. No attempt is made to restrict participants to those who possess substantive legal rights, nor has it been assumed that permitting such a person to appear by formal intervention or otherwise represents either a determination that he has standing to challenge the proceeding in the courts or that his appearance vests him with a litigable interest which he would not otherwise

possess.[12] See *Alexander Sprunt & Son* v. *United States*, 281 U. S. 249, 255, 257; *Pittsburgh & West Virginia Ry.* v. *United States*, 281 U. S. 479, 486; cf. *Alton R. Co.* v. *United States*, 315 U. S. 15, 19.

Further, the decision below ignores the fact that Section 6 (b) in express terms makes the appearance of a party in the administrative proceeding in which an order is entered, a separate and independent prerequisite to his filing a petition as a person aggrieved by the order. Fulfilment of this one condition cannot, without doing violence to the plain language of the Act, be deemed fulfilment of the other.[13]

4. In our view, neither the *Sanders* case nor other applicable authorities justify the conclusion of the court below that respondent, as a membership corporation of New York, may assert the

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[12] Some agencies have so indicated by express regulation. See Regulations of the Civil Aeronautics Authority, 14 Code of Federal Regulations (1939 Supp.), § 285.4; Rules and Regulations of the Federal Communications Commission, 47 Code of Federal Regulations (1939 Supp.), § 1.102. See, also, the practice of the Federal Power Commission in *Public Service Gas Co.*, F. P. C. Docket No. 9–108; *North Dakota Consumers Gas Co.*, F. P. C. Docket No. 6–119.

[13] The opinion below suggests that the "plain purpose" of the requirement that an aggrieved person must also be a party to the administrative proceeding "is to preclude review by one who, although 'aggrieved' has not first presented objections" to the Division (R. 57). Such an interpretation renders redundant and unnecessary the express provisions also contained in Section 6 (b) that "No objection to the orders of the Commission [Division] shall be considered by the court unless such objections have been urged below."

rights of some of its constituent members who purchase or consume bituminous coal, and by reason of the economic interests of these members, maintain a petition for judicial review of minimum price-fixing orders as a champion of the public interest.

The petition for review does not allege that respondent, as a membership corporation, has in the past been a purchaser or consumer of bituminous coal or that it intends in the future to make purchases of coal which are or may be affected by the challenged orders; indeed, respondent admitted in the court below that it is not a coal purchaser. The petition (R. 1) alleges only that respondent's "members purchase and consume substantial quantities of bituminous coal" for the sale of which the challenged orders established minimum prices. It is also alleged (R. 14) that "the orders are prejudicial to petitioner [respondent] and its members in that they require petitioner and its members to purchase and pay for bituminous coal" at increased minimum prices.[14] The petition contains no allegations that respondent sues to vindicate the public interest or to assert any rights other than its own or those of its members, or that the members have authorized respondent to sue in their behalf. The

[14] Unlike the Emergency Price Control Act of 1942 (Act of January 30, 1942, Pub. No. 421, 77th Cong., 2d Sess., Sections 4 (a), 203 (a), and 204 (a)), the Bituminous Coal Act of 1937 does not impose any penalties or affirmative obligations on purchasers of commodities subject to price regulation.

petition did not allege that respondent or its members are actually purchasing coal at the bare minimum prices established by the challenged orders. Cf. *Hegeman Farms Corp.* v. *Baldwin*, 293 U. S. 163, 170.

This Court has held that one seeking to set aside an administrative order must allege in his complaint that he has "capacity to sue"—that he "has, or represents others having, a legal right or interest that will be injuriously affected by the order." *Moffat Tunnel League* v. *United States*, 289 U. S. 113, 119, 121.[15] Respondent has shown neither, although both are challenged by the motion to dismiss. Since respondent has failed to establish that the challenged orders cause it any economic injury and has failed to show that it is empowered to sue in behalf of any of its members who may conceivably be injured, respondent has failed to fulfil the essential prerequisite to the maintenance of a suit as a representative of the public interest. *Federal Communications Commission* v. *Sanders Brothers Radio Station*, 309 U. S. 470.

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[15] See also *In re Engelhard & Sons Company*, 231 U. S. 646, 652; *KVOS, Inc.* v. *Associated Press*, 299 U. S. 269, 278; *Consolidated Gas Co.* v. *Newton*, 256 Fed. 238 (S. D. N. Y.), affirmed, 260 Fed. 1022 (C. C. A. 2); *Wholesale Grocers' Ass'n* v. *Federal Trade Commission*, 277 Fed. 657, 661 (C. C. A. 5); *John L. Walker Co.* v. *National Underwriters Co.*, 3 F. (2d) 102 (C. C. A. 7). Cf Rule 17 (a), Federal Rules of Civil Procedure; *Hegeman Farms Corp.* v. *Baldwin*, 293 U. S. 163, 170.

CONCLUSION

It is respectfully submitted that this petition for writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit should be granted.

CHARLES FAHY,
Solicitor General.

WARNER W. GARDNER,
Solicitor, United States Department of the Interior.

ARNOLD LEVY,
General Counsel,
Bituminous Coal Division,
United States Department of the Interior.

MAY 1943.

APPENDIX

Bituminous Coal Act of 1937, Act of April 26, 1937, c. 127, 50 Stat. 72, 15 U. S. C. § 828, as extended by amendment April 11, 1941, 55 Stat. 134, 15 U. S. C. Supp. I § 849, and April 24, 1943, P. L. 40, 78th Cong., 1st sess. c. 68, H. J. Res. 113:

SEC. 22 (a). There is hereby established in the Executive branch of the Government an office to be known as the Office of the Bituminous Coal Consumers' Counsel. The office shall be in charge of a counsel to be appointed by the President, by and with the advice and consent of the Senate. The counsel shall have no financial interest, direct or indirect, in the mining, transportation, or sale of, or the manufacture of equipment for, coal (whether or not bituminous coal), oil, or gas, or in the generation, transmission, or sale of hydroelectric power, or in the manufacture of equipment for the use thereof, and shall not actively engage in any other business, vocation, or employment * * *

SEC. 22 (b). The counsel shall have and perform the functions conferred and imposed upon the Consumers' Counsel of the National Bituminous Coal Commission by this Act as in force upon its enactment * * *

SEC. 2 (b) (2). It shall be the duty of the counsel to appear in the interest of the consuming public in any proceeding before the Commission and to conduct such independent investigation of matters rela-

tive to the coal industry and the administration of this Act as he may deem necessary to enable him properly to represent the consuming public in any proceeding before the Commission. In any such proceeding before the Commission, the counsel shall have the right to offer any relevant testimony and argument, oral or written, and to examine and cross-examine witnesses and parties to the proceeding, and shall have the right to have subpena or other process of the Commission issue in his behalf. Whenever the counsel finds that it is in the interest of the consuming public to have the Commission furnish any information at its command or conduct any investigation as to any matter within its authority, the counsel shall so certify to the Commission, specifying in the certificate the information or investigation desired. Thereupon the Commission shall promptly furnish to the counsel the information or promptly conduct the investigation and place the results thereof at the disposal of the counsel.

SEC. 2 (b) (4). The counsel shall annually make a full report of the activities of his office directly to the Congress.

SEC. 4 II (d). If any code member or district board or member thereof, or any State or political subdivision of a State, or the consumers' counsel, shall be dissatisfied with such coordination of prices or rules and regulations, or by a failure to establish such coordination of prices or rules and regulations, or by any minimum or maximum prices established pursuant to subsections (b) or (c) of part II of this section, he or it shall have the right, by petition, to make complaint to the Commission,

and the Commission shall, under rules and regulations established by it, and after notice and hearing, make such order as may be required to effectuate the purpose of subsections (b) and (c) of part II of this section * * *

SEC. 4 II (j). The Commission shall have jurisdiction to hear and determine written complaints made by any code member, district board, or member thereof, State or political subdivision of a State, or the consumers' counsel, which charge any violation of the code specified in part II of this section * * *

SEC. 4–A. Whenever the Commission upon investigation instituted upon its own motion or upon petition of any code member, district board, State or political subdivision thereof, or the consumers' counsel, after hearing finds that transactions in coal in intrastate commerce by any person or in any locality cause any undue or unreasonable advantage, preference, or prejudice as between persons and localities in such commerce on the one hand and interstate commerce in coal on the other hand, or any undue, unreasonable, or unjust discrimination against interstate commerce in coal, or in any manner directly affect interstate commerce in coal, the Commission shall by order so declare and thereafter coal sold, delivered or offered for sale in such intrastate commerce shall be subject to the provisions of section 4 * * *

Sec. 5 (b). The membership of any such coal producer in such code and his right to an exemption from the taxes imposed by section 3 (b) of this Act, may be revoked by the Commission upon written

complaint by any code member or district board, or any State or political subdivision of a State, or the consumers' counsel, after a hearing, with thirty days' written notice to the member, upon proof that such member has willfully violated any provision of the code or any regulation made thereunder; and in such a hearing any code member or district board, or any State or political subdivision of a State, or the consumers' counsel, or any consumer or employee, and the Commissioner of Internal Revenue, shall be entitled to present evidence and be heard * * *

SEC. 15. Upon substantial complaint that coal prices are excessive, and oppressive of consumers, or that any district board, or producers' marketing agency, is operating against the public interest, or in violation of this Act, the Commission may hear such complaint, and its findings shall be made public; and the Commission shall make proper orders within the purview of this Act so as to correct such abuses. The Commission may institute proceedings under this section, and complaints may be made by any State or political subdivision of a State or by the consumers' counsel.

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